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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
08/942,810	10/02/1997	SCOTT R. WATTERSON	2727.1US	8593
22913	7590	11/25/2003		
WORKMAN NYDEGGER (F/K/A WORKMAN NYDEGGER & SEELEY) 60 EAST SOUTH TEMPLE 1000 EAGLE GATE TOWER SALT LAKE CITY, UT 84111			EXAMINER RICHMAN, GLENN E	
			ART UNIT 3764	PAPER NUMBER

DATE MAILED: 11/25/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

08/942,810

Applicant(s)

Watterson et al

Examiner

Glenn Richman

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on Dec 20, 2002
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 21, 22, 24, and 38-51 is/are pending in the application.
- 4a) Of the above, claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 21, 22, 24, and 38-51 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____ 6) ☐ Other:

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1. *Claim Rejections - 35 USC § 103*

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 21, 22, 24, 38-41, 44-49 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rorabaugh in view of Bridenbaugh.

Rorabaugh discloses a support structure (37), and a tread base rotatably attached to the support structure such that the tread base is selectively moveable between an operating position and a storage position (col. 4, lines 50-57).

Rorabaugh does not disclose a motor attached to the treadbase located forward of the pivot pin.

Bridenbaugh discloses a motor located forward of the pivot point (fig. 1).

It would have been obvious to use Bridenbaugh's location of the motor with Rorabaugh's treadmill and motor, as it is well known, as taught by Bridenbaugh, to have a motor located in front of a pivot point in folding mechanism, for providing a counterweight to the lifting mechanism, and as it is well known to use multiple types of weights for providing a counterbalancing means.

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As for claims 38-41, Bridenbaugh further disclose an electric motor controlling mechanism locate forward the pivot point (77), the motor has a weight and biased the base in the storage position (fig. 1), lift assist means connected between the support structure and the base for assisting a user comprising a pneumatic cylinder (col. 3, lines 27-54).

As for claim 45, Rorabaugh does not disclose his flywheel (30) is located forward of the pivot point, however given the above obviousness it would have been further obvious to have the flywheel located forward the pivot point.

4. Claim 42 and 50 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rorabaugh in view of Bridenbaugh as applied to the claims above, and further in view of Teague, Jr.

Rorabaugh does not disclose a gas spring connected between the support structure and the tread base.

Teague, Jr. discloses a gas spring (56) used for assisting the lifting of a bed base (2) into a support structure (fig. 1).

It would have been obvious to use Teague, Jr's gas spring with Rorabaugh, as it is well known to use a gas spring between a support structure and a base, as taught by Teague, Jr., to provide an assist in moving the support structure into a storage position.

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Claim Rejections - 35 USC § 103

5. Claim 43 and 51 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rorabaugh in view of Bridenbaugh as applied to the claims above, and further in view of Schoneneberger.

Rorabaugh and Teague, Jr. do not specifically detail a latch for securing the folding device.

Schoneneberger discloses a conventional latch means for securing a tread base when in the storage position (col. 2, lines 14-18).

It would have been obvious to use Schoneneberger's catch means when Rorabaugh and Bridenbaugh's are in the storage position, as it is well known to use a latch means, as taught by Schoneneberger, for holding a base frame in a storage position.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Guilbault disclose a sleeping bed combined with an exercise treadmill, which uses a lift assist for aiding a user in the lifting of the bed.

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6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Glenn Richman whose telephone number is (703)308-3170. The examiner can normally be reached Tuesday through Thursday from 7:30 AM to 6:00 PM Eastern time. The facsimile number for Art Unit 3764 is (703)308-0758. The facsimile number for submitting formal papers to Technology Center 3700 is (703)305-3590.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group 3730 receptionist whose telephone number is (703)308-0858 or to Customer Service at (703)305-8283

gr
November 21, 2003



Glenn Richman
Primary Examiner
AU 3764